

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOVEREIGN BANK,

Plaintiff

vs.

**CLARK'S AG CENTER, INC.,
NORMAN VENEMA and
JULIA A. CLARK-VENEMA,
Defendants**

:
: **No. 06-01,773**
:
:
: **CIVIL ACTION – LAW**
:
:
: **Plaintiff's Petition to File Motion for**
: **Post-Trial Relief Nunc Pro Tunc/**
: **Motion for Post-Trial Relief Nunc Pro**
: **Tunc**

ORDER

AND NOW, this ____ day of February 2007, upon consideration of Plaintiff's Petition to File Motion for Post Trial Relief Nunc Pro Tunc, it is ORDERED and DIRECTED as follows:

The Court believes it no longer has jurisdiction to address Plaintiff's motions since Plaintiff filed a notice of appeal. Even if the Court had jurisdiction to address Plaintiff's motions, it would not be inclined to grant them. The Court is not inclined to grant the petition to file motion for post trial relief nunc pro tunc, because: (1) the sheriff's sale has already been held; (2) judgment was entered on the Court's verdict on February 7, 2007; (3) Plaintiff did not file its motions until February 9, 2007; and (4) Plaintiff did not have a good reason for failing to file its motion for post trial relief in a timely fashion.

If the Court reached the merits of the motion for post trial relief, the Court would summarily deny the motion. The Court found Plaintiff did not meet the four prong test for equitable subrogation set forth in First Commonwealth Bank v. Heller, 863 A.2d 1153, 1158 (Pa.Super. 2004), appeal denied 887 A.2d 231 (Pa. 2005). In its post trial

motions, Plaintiff argues that the Heller test does not apply because the Venemas defrauded Sovereign into satisfying the previous mortgage and relinquishing its first lien priority. The Court, however, found that Sovereign did not meet its burden of proof to show that the Venemas or Clark's Ag Center, Inc. (CACI) committed fraud upon Sovereign. The Court found the Venemas testimony credible that: (1) they did not know the PNC judgment was a lien against their residence; (2) they believed certain business assets were sufficient to satisfy the PNC judgment and (3) their bankruptcy attorney for the business told them the PNC judgment would not affect their home. Furthermore, Sovereign did not present any evidence that any alleged fraud or misrepresentation caused it damage. Sovereign did not present any evidence regarding the value of the Venemas residence to show that its mortgage would be under collateralized if it had second lien priority. Sovereign also did not present any evidence to show the Venemas were not paying Sovereign under the mortgage or the note.

By The Court,

Kenneth D. Brown, P.J.

cc: Kristine Waltz, Esquire (counsel for CACI)
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Work file